

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VERONICA MADDY, *on behalf of herself and
all others similarly situated*,

Plaintiffs,

-against-

BBS BEAUTY SYSTEMS, INC.,

Defendant.

22-CV-4944 (AS)

ORDER

ARUN SUBRAMANIAN, United States District Judge:

Plaintiff Veronica Maddy is a visually-impaired and legally blind person who claims defendant BBS Beauty System, Inc.’s website is not accessible to blind persons. Dkt. 1 ¶¶ 2, 8. Maddy is represented by counsel in this matter.

On September 18, 2023, Maddy filed a notice of voluntary dismissal. Dkt. 12. The next day, the clerk’s office notified her attorney that the filing was deficient and provided instructions for refile. On October 10, 2023, this Court ordered that Maddy comply with the directions for refile by October 13, 2023. Dkt. 13. Maddy failed to do so or provide any explanation for failing to do so. On October 18, 2023, this Court again ordered Maddy to correct the deficiency, this time setting a deadline of October 25, 2023. Dkt. 14. This Court warned that if Maddy failed to do so, “this case will be dismissed for failure to prosecute.” *Id.* It is now October 27, 2023, and Maddy has yet to correct the filing or provide an explanation for failing to do so. As such, this case is DISMISSED without prejudice for failure to prosecute.

Courts can dismiss a case sua sponte for failure to prosecute. *LeSane v. Hall’s Sec. Analyst, Inc.*, 239 F.3d 206, 209 (2d Cir. 2001). When deciding whether to do so, courts consider: (1) the duration of plaintiff’s failures, (2) whether plaintiff was told that further delays would lead to dismissal, (3) whether defendant is likely to be prejudiced by further delay, (4) the proper balance between alleviating court calendar congestion and protecting plaintiff’s right to due process and an opportunity to be heard, and (5) whether lesser sanctions could be effective. *Id.*


This Court finds that these factors favor dismissal here. Maddy has repeatedly ignored this Court’s orders without explanation. *Cf. Chidume v. Greenburgh-N. Castle Union Free Sch. Dist.*, No. 18-CV-01790 (PMH), 2021 WL 195948, at *2 (S.D.N.Y. Jan. 20, 2021) (finding dismissal warranted where plaintiff failed to respond to two separate orders). She has not taken any action to prosecute this case since September 18, 2023. She has yet to respond in any way to this Court’s order from 17 days ago. And she was warned that failing to comply with this Court’s orders by October 25, 2023, would result in dismissal for failure to prosecute. There is no indication that Maddy intends to continue prosecuting this matter or that lesser sanctions would spur her into

action. And because she apparently intends to voluntarily dismiss this matter anyway, this Court finds that the balance between court congestion and protecting the plaintiff's right to be heard favors dismissal. **Counsel for Plaintiff is warned that in future matters, counsel must follow the Court's instructions or appropriate measures will be taken by the Court to ensure compliance.**

The Clerk of Court is respectfully directed to CLOSE this case.

SO ORDERED.

Dated: October 27, 2023
New York, New York



ARUN SUBRAMANIAN
United States District Judge